

Tenn. Code Ann. § 47-18-1001

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*** CURRENT THROUGH THE 2011 REGULAR SESSION ***

Title 47 Commercial Instruments And Transactions
Chapter 18 Consumer Protection
Part 10 Credit Services Businesses

Tenn. Code Ann. § 47-18-1001 (2012)

47-18-1001. Short title.

This part shall be known and may be cited as the "Tennessee Credit Services Businesses Act."

47-18-1002. Definitions.

As used in this part, unless the context otherwise requires:

(1) "Attorney general" means the office of the attorney general and reporter;
(2) "Consumer" means any individual who is solicited to purchase or who purchases the services of a credit services business;
(3) (A) "Consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, which is furnished or is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

- (i) Credit or insurance to be used primarily for personal, family, or household purposes;
- (ii) Employment purposes; or
- (iii) Other purposes which shall be limited to the following circumstances:
 - (a) In response to the order of a court having jurisdiction to issue the order;
 - (b) In accordance with the written instructions of the consumer to whom the report relates; or
 - (c) To a person which the agency has reason to believe:
 - (1) Intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to or review or collection of an account of, the consumer;
 - (2) Intends to use the information for employment purposes;
 - (3) Intends to use the information in connection with the underwriting of insurance involving the consumer;
 - (4) Intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or

status; or

(5) Otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

(B) "Consumer report" does not include:

(i) Any report containing information solely as to transactions or experiences between the consumer and the person making the report;

(ii) Any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or

(iii) Any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys the person's decision with respect to the request, if the third party advises the consumer of the name and address of the person to whom the request was made, and the person makes the disclosures to the consumer as to the exact nature of the request and the effect of the report on its decision to extend credit.

(4) (A) "Consumer reporting agency" means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and who uses any means or facility of commerce for the purpose of preparing or furnishing consumer reports.

(B) "Consumer reporting agency" does not include a private detective or investigator licensed under the provisions of title 62, chapter 26.

(5) (A) "Credit services business" means any person who, with respect to the extension of credit by others, sells, provides, or performs, or represents that such person can or will sell, provide, or perform any of the following services in return for the payment of money or other valuable consideration:

(i) Improving a consumer's credit record, history, or rating;

(ii) Obtaining an extension of credit for a consumer; or

(iii) Providing advice or assistance to a consumer with regard to either (i) or (ii) of this subdivision (5)(A).

(B) "Credit services business" does not include:

(i) The making, arranging, or negotiating directly for a loan or extension of credit under the laws of this state or the United States;

(ii) Any bank, trust company, savings bank, or savings institution whose deposits or accounts are eligible for insurance by the federal deposit insurance corporation or any credit union organized and chartered under the laws of this state or the United States;

(iii) Any nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3));

(iv) Any person licensed as a real estate broker by this state where the person is acting within the course and scope of that license;

(v) Any person licensed to practice law in this state where the person renders services within the course and scope of that person's practice as a lawyer;

(vi) Any broker-dealer registered with the securities and exchange commission or the commodity futures trading commission where the broker-dealer is acting within the course and scope of that regulation; or

(vii) Any consumer reporting agency as defined in the Federal Fair Credit Reporting Act (15 U.S.C. §§ 1681-1681t).

(6) "Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment, offered or granted primarily for personal, family, or household purposes;

(7) "File," when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting

agency regardless of how the information is stored;

(8) "Investigative consumer report" means a consumer report or portion of it in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom the consumer is acquainted, or who may have knowledge concerning any items of information. However, the information does not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency, when the information was obtained directly from a creditor of the consumer or from the consumer; and

(9) "Person" includes an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, two (2) or more persons having a joint or common interest, and any other legal or commercial entity.

47-18-1003. Prohibited practices.

A credit services business, and its salespersons, agents and representatives, and independent contractors who sell or attempt to sell the services of a credit services business, shall not do any of the following:

(1) Charge or receive any money or other valuable consideration prior to full and complete performance of the services that the credit services business has agreed to perform for or on behalf of the consumer, including all representations made orally or in writing. "Full and complete performance" means fulfillment of all items listed in the contract and other solicitations or communications to consumers;

(2) Charge or receive any money or other valuable consideration solely for referral of the consumer to a retail seller or to any other credit grantor who will or may extend credit to the consumer, if the credit that is or will be extended to the consumer is upon substantially the same terms as those available to the general public;

(3) Make, or counsel or advise any consumer to make, any statement that is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, to a consumer reporting agency or to any person who has extended credit to a consumer or to whom a consumer is applying for an extension of credit, with respect to a consumer's creditworthiness, credit standing, or credit capacity;

(4) Make or use any untrue or misleading representations in the offer or sale of the services of a credit services business or engage, directly or indirectly, in any act, practice, or course of business which operates or would operate as a fraud or deception upon any person in connection with the offer or sale of the services of a credit services business; or

(5) Create, or assist or advise the consumer to create a new credit record by using a different name, address, social security number, or employee identification number;

(6) Provide, in any manner, the services of a credit services business within this state, without registering a bond consistent with the provisions of § 47-18-1011;

(7) Remove, assist or advise the consumer to remove or otherwise alter adverse information from the consumer's credit record which is accurate or not obsolete;

(8) Create, assist or advise the consumer to request that positive information be inserted or included on the consumer's credit record which is false, inaccurate or obsolete;

(9) Use a program or plan which uses or employs installment payments featuring payments charged directly to a credit card prior to full and complete performance of

the services that the credit services business has agreed to perform for or on behalf of the consumer; or

(10) Engaging in any violation of the federal Consumer Credit Protection Act.

47-18-1004. Information statement required -- Record on file.

(a) Before the execution of a contract or agreement between a consumer and a credit services business or the receipt by the credit services business of any money or other valuable consideration, whichever occurs first, the credit services business shall provide the consumer with an information statement in writing containing all of the information required under § 47-18-1005.

(b) The credit services business shall maintain on file or microfilm for a period of two (2) years from the date of the consumer's acknowledgement an exact copy of the information statement personally signed by the consumer acknowledging receipt of a copy of the information statement.

47-18-1005. Contents of information statement.

The information statement required under § 47-18-1004 shall include all of the following:

(1) (A) A complete and accurate statement of the consumer's right to review any file on the consumer maintained by any consumer reporting agency, and the right of the consumer to receive a copy of a consumer report containing all information in that file as provided under the Federal Fair Credit Reporting Act (15 U.S.C. § 1681g);

(B) A statement that a copy of the consumer report containing all information in the consumer's file will be furnished free of charge by the consumer reporting agency, if requested by the consumer within thirty (30) days from receipt of the consumer's request; and

(C) A statement that a nominal charge, not to exceed eight dollars (\$8.00), may be imposed on the consumer by the consumer reporting agency for a copy of the consumer report containing all information in the consumer's file, if the consumer has not been denied credit within sixty (60) days from receipt of the consumer's request.

(2) A complete and accurate statement of the consumer's right to dispute the completeness or accuracy of any item contained in any file on the consumer that is maintained by any consumer reporting agency, as provided under the Federal Fair Credit Reporting Act (15 U.S.C. § 1681(i));

(3) A complete and detailed description of the services to be performed by the credit services business for or on behalf of the consumer, and the total amount the consumer will have to pay, or become obligated to pay, for the services;

(4) (A) Name and address of the surety company which issued the bond in accordance with § 47-18-1011;

(B) A statement explaining the consumer's right to proceed against the bond; and

(5) A complete and accurate statement of the availability of non-profit credit counseling.

47-18-1006. Contract -- Cancellation notice.

(a) Every contract between a consumer and a credit services business for the purchase of the services of the credit services business shall be in writing, dated,

signed by the consumer, and shall include all of the following:

(1) A conspicuous statement in size equal to at least ten (10) point bold type, in immediate proximity to the space reserved for the signature of the consumer, as follows:

"You, the buyer, may cancel this contract at any time prior to twelve o'clock midnight (12:00) of the fifth business day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right.";

(2) The terms and conditions of payment, including the total of all payments to be made by the consumer, whether to the credit services business or to some other person;

(3) A complete and detailed description of the services to be performed and the results to be achieved by the credit services business for or on behalf of the consumer, including all guarantees and all promises of full or partial refunds and a list of the adverse information appearing on the consumer's credit report that the credit services business expects to have modified; and

(4) The principal business address of the credit services business and the name and address of its agent in this state authorized to receive service of process.

(b) (1) The contract shall be accompanied by a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract and easily detachable, and which shall contain in at least ten (10) point bold type the following statement:

NOTICE OF CANCELLATION

NOTICE OF CANCELLATION

You may cancel this contract, without any penalty or obligation, at any time prior to twelve o'clock midnight (12:00) of the fifth business day after the date the contract is signed.

If you cancel, any payment made by you under this contract will be returned within ten (10) days following receipt by the seller of your cancellation notice.

To cancel this contract, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, to _____ (Name of Seller)
at _____ (Address of Seller)
_____ (Place of Business) not later than twelve
o'clock midnight (12:00) _____ (Date)

I HEREBY CANCEL THIS TRANSACTION.

Date

(Buyer's Signature)

(2) A copy of the fully completed contract and all other documents the credit services business requires the consumer to sign shall be given by the credit services business to the consumer at the time they are signed.

47-18-1007. Violations -- Proof of exemption.

(a) Any breach by a credit services business of a contract under this part, or of any obligation arising under it, constitutes a violation of this part.

(b) Any contract for services from a credit services business that does not comply with the applicable provisions of this part shall be void and unenforceable as contrary to the public policy of this state.

(c) Any waiver by a consumer of any of the provisions of this part shall be deemed void and unenforceable by a credit services business as contrary to public policy of this state, and any attempt by a credit services business to have a consumer waive rights given by this part constitutes a violation of this part.

(d) In any proceeding involving this part, the burden of proving an exemption or an exception from the definition is upon the person claiming it.

47-18-1008. Damages, private actions.

(a) In any private action, any credit services business, which willfully fails to comply with any requirement imposed under this part with respect to any consumer, is liable to the consumer in an amount equal to the sum of:

(1) Any actual damages sustained by the consumer as a result of the failure, or any amount paid by the person to the credit services business whichever is greater. This remedy is supplemental to any other remedy contained within this chapter.

(2) Such amount of punitive damages as the court may allow.

(b) In any private action, any credit services business which is negligent in failing to comply with any requirement imposed under this part with respect to any consumer is liable to that consumer in an amount equal to the sum of any actual damages sustained by the consumer as a result of the failure.

47-18-1009. Limitation of actions.

A private action to enforce any liability created under this part may be brought within two (2) years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under this part to be disclosed to a consumer, and the information so misrepresented is material to the establishment of the defendant's liability to that consumer under this part, the action may be brought at any time within two (2) years after discovery by the consumer of the misrepresentation. No action brought by the attorney general and reporter shall be subject to the limitation of actions contained herein.

47-18-1010. Violation of Consumer Protection Act -- Institution of proceedings.

(a) A violation of this part constitutes a violation of the Tennessee Consumer Protection Act, compiled at part 1 of this chapter. For the purpose of application of the Tennessee Consumer Protection Act, any violation of the provisions of this part shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of any trade or commerce and subject to the penalties and remedies as provided by that act.

(b) If the attorney general has reason to believe that any credit services business,

or any salesperson, agent, representative, or independent contractor acting on behalf of a credit services business, has violated any provision of this part, the attorney general may institute a proceeding under this chapter.

47-18-1011. Bond.

(1) In order to provide a degree of protection to customers of credit services businesses, each credit services business shall post a bond of one hundred thousand dollars (\$100,000) with the department of commerce and insurance. Such bond may be made through deposit of cash, a certificate of deposit, securities, or with a bond issued by a corporate surety acceptable to the commissioner.

(2) The bond must be maintained for two (2) years following the date on which the credit services business ceases to conduct business in this state.

(3) In an action brought by the attorney general and reporter pursuant to § 47-18-1010, the attorney general and reporter shall have the right to request that the total amount of the bond posted by the credit services business be awarded to the state for consumer restitution or civil penalties.

(4) Notwithstanding the provisions of subdivision (1), any credit services business that was registered with the division of consumer affairs in the department of commerce and insurance on May 1, 1998, in this state shall only be required to post a bond in the amount of ten thousand dollars (\$10,000) with the department. Such bond may be made through deposit of cash, a certificate of deposit, securities, or with a bond issued by a corporate surety acceptable to the commissioner.